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C O N F I D E N T I A L SECTION 01 OF 02 BRASILIA 001069

SIPDIS

STATE FOR L JOHNSON AND L/LEI, WHA/BSC, WHA/CHRIS MCMULLEN,
DEPARTMENT OF JUSTICE FOR SWARTZ AND OIA, DEA FOR OGC JOHN
WALLACE, DEA REGIONAL DIRECTOR US EMBASSY LA PAZ PATRICK
STANKEMP

E.O. 12958: DECL: 08/06/2018

TAGS: [KJUS](#) [KCRM](#) [CJAN](#) [PREL](#) [CVIS](#) [SNAR](#) [BR](#)

SUBJECT: NEXT STEPS ON ABADIA EXTRADITION CASE AND OTHER
EXTRADITION ASSURANCE REQUESTS

REF: A. AUGUST 5 2008 EMBASSY
BRASILIA-STATE/WHA-STATE/L/LEI-DOJ/OIA
CONFERENCE CALL
[1](#)B. BRASILIA 01035 AND PREVIOUS

Classified By: Deputy Chief of Mission Lisa Kubiske for reason 1.5 (d)

[1](#)1. (C) Summary and Action Request. Post appreciates Department and DOJ assistance in determining next steps on securing the extradition of Juan Carlos Ramirez Abadia ("Chupeta") and requests the guidance discussed ref A on an urgent basis, as ongoing investigations into Abadia's activities in Brazil could halt extradition proceedings indefinitely. Post agrees that the Abadia case should be considered exceptional with regard to the assurances the Brazilian Supreme Court (STF) is seeking, and that the problems associated with providing such assurances should be addressed separately. Post looks forward to working with L/LEI and DOJ to engage the GOB on this issue. It is important to note that contacts are unanimous with regard to the constitutional authority of the STF to require such assurances, and stress that the GOB would consider extradition without complying with the STF order to be unconstitutional. End summary and action request.

[1](#)2. (SBU) Post appreciates assistance of WHA, L/LEI, and DOJ (Ref A) in determining next steps on securing the extradition of Juan Carlos Ramirez Abadia ("Chupeta") (Ref B). Post understands that State/L/LEI, in consultation with DOJ/OIA is preparing language for a new diplomatic note, as the Brazilian Government has informally requested, renewing the United State's request for Abadia's extradition, as a way of prompting immediate extradition, rather than after Abadia serves his sentence in Brazil. Post further understands that we may be able to offer, in this particular case, the assurances the Brazilian Federal Supreme Court (STF) has demanded as a condition for extradition. These assurances include a commitment on the part of the United States that Abadia will not serve more than 30 years in prison, as well as the commitment that the United States will credit Abadia with any time served in Brazil.

[1](#)3. (C) Our Ministry of Justice and Federal Police contacts have stressed that time is of the essence in the Abadia case. Abadia was questioned over the weekend regarding a planned escape attempt from the prison where he is serving his sentence. Further, he continues to be investigated by the Federal Police for crimes he may have committed in Brazil and new reports of his illegal activities while in prison are surfacing each day. Either of these investigations could

lead to further charges being filed against him in Brazilian courts within days, making it bureaucratically and politically significantly more difficult for President Lula to approve his extradition. Moreover, the longer the extradition process takes, the more likely the reasons for the delay will be leaked to the press. In either case, the result could be an indefinite delay in Abadia's extradition to the United States.

¶4. (SBU) Post agrees that actions we take with regards to Abadia should be considered unique and exceptional, and that we will need to discuss separately with the GOB the broader issue of assurances. We have made known to our Brazilian interlocutors at every opportunity that the United States is extremely uncomfortable with requests for assurances that fall outside the extradition treaty imposed by the Brazilian Government as conditions for approving U.S. extradition requests. Furthermore, we have noted that if the United States does decide to provide the assurances in the Abadia case, Brazil should consider it an exceptional circumstance and that it should not expect the United States to routinely provide these assurances.

¶5. (C) It is important to note that Embassy contacts have unanimously stressed that the Brazilian constitution gives the STF full authority to impose the conditions it has placed on extradition. Minister of Defense Jobim, a former Federal Deputy, Minister of Justice, and Chief Justice of the STF personally insisted to the Ambassador that there is no constitutional means around the STF ruling. Ambassador Oswaldo Portella, a Ministry of External Relations detailee

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to the Ministry of Justice and the Minister's international advisor, told our FBI Legal Attache that he recognized that these assurances fell outside the extradition treaty, but that the Government's hands were tied. Any suggestion on our part that the GOB work around the STF order will be seen as a request for the GOB to take unconstitutional action. Moreover, the STF condition regarding assurances pertaining to a maximum penalty of 30 years is based on STF precedent going back several years. As far as Post has been able to determine, the STF started applying the Brazilian penal code -- which limits to 30 years the maximum amount of time someone can serve in prison -- to extradition cases in a case involving an extradition requested by Chile in 2004. Since then, the STF has included these requests for assurances as a condition for granting extraditions in their orders approving extraditions.

¶6. (C) With regard to other assurances that will have to be provided before the Brazilians will approve Abadia's extradition -- including those required under Article 91 of Brazilian 6.815/80 -- it is Post's understanding that Washington also is preparing guidance for Post to submit to the Brazilian Government. It is important to note that although these fall outside the Extradition Treaty, they are required under Brazilian law and Brazil requires them of every country. Furthermore, when pressed to explain why Brazil is imposing extra-treaty commitments as conditions for extradition, our Brazilian contacts have responded that Article XI of the bilateral Extradition Treaty guarantees that the law of the requested state is the one that shall apply when deciding if an extradition will be approved. Nevertheless, our Brazilian contacts at the Ministry of Justice (MoJ), including the National Secretary of Justice (an Under-Secretary level official within the MoJ), the chief of the MoJ's Department of Foreigners, and the chief of the MoJ's Extraditions Division have all indicated that they are amenable to working with the United States to come up with compromise language that can satisfy both parties.

SOBEL